

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TRACY CLARE MICKS-HARM,

Lead Case No. 18-12634

Hon. Denise Page Hood
Magistrate R. Steven Whalen

Plaintiff,

vs.

WILLIAM PAUL NICHOLS ET AL.,

**Reply in Support of Motion to
Dismiss (for all other
similarly situated Plaintiffs)**

Defendants.

Consolidated with Case Nos. 18-
13206, 18-13639, 18-13647, 19-10125,
19-10126, 19-10132, 19- 10135,
19-10299

**DEFENDANT IPATIENTCARE INC.'S REPLY IN SUPPORT OF ITS
MOTION TO DISMISS**

NOW COMES Defendant, IPATIENTCARE INC. (“**IPC**”), by and through
its legal counsel, Robert S. Iwrey Esq. and James R. Witham Esq., of THE HEALTH
LAW PARTNERS, P.C., and states as follows:

1. As an initial matter, Plaintiffs’ Response briefings are all untimely filed and
have caused extreme prejudice to IPC.

2. This Court set Plaintiffs’ Response brief deadline for March 8, 2019.

3. On March 8, 2019, not one Plaintiff timely filed a response brief responsive to IPC's Motion to Dismiss.

4. As a result, IPC has been left with most of the Plaintiffs in this case filing response briefs on or about March 22, 2019, the date IPC is to file its Reply brief.

5. Plaintiffs, Tracy Clare Micks-Harm, Debra Nichols, Ines Helm, Dennis Helm, Renay Blakesley, Raymond Blakesley, Eric Cook, and Eric Cook (on behalf of Jacob Cook) have filed lawsuits against IPC that have been removed from Monroe County Circuit Court into federal court.

6. On February 15, 2019, this Court determined that the above-mentioned Plaintiffs and their cases would be consolidated under Micks-Harm v. Nichols et al., case number 2:18-cv-12634-DPH-RSW.¹

7. It is expected that several other plaintiff related cases may be removed and consolidated with this case.

¹ Subsequently, on February 20, 2019, this Court entered an Order to consolidate the above-mentioned cases and any other new and related cases filed and reassigned to the Court (ECF No. 27) and specifically cited:

- 1) Nichols v. Nichols et al, 18-cv-13206 (Hood, J.) (removed on October 15, 2018);
- 2) Helm v. Arnold et al, 18-cv-13639 (Hood, J.) (removed on November 21, 2018);
- 3) Helm v. Nichols et al, 18-cv-13647 (Hood, J.) (removed on November 21, 2018);
- 4) Cook v. William et al, 19-cv-10125 (Hood, J.) (removed on January 14, 2019);
- 5) Cook v. Nichols et al, 19-cv-10126 (Hood, J.) (removed on January 14, 2019);
- 6) Cook v. Nicols et al, 19-cv-10132 (Hood, J.) (removed on January 14, 2019);
- 7) Cook v. Nichols et al, 19-cv-10135 (Hood, J.) (removed on January 14, 2019); and
- 8) Blakesley v. Nichols et al, 19-cv-10299 (Hood, J.) (removed on January 30, 2019)

for consolidation.

8. IPC hereby Replies and moves to dismiss all cases consolidated or scheduled to be consolidated under *Micks-Harm v. Nichols et al.*, case number 2:18-cv-12634-DPH-RSW.

9. Plaintiffs make various deficiently pled claims against IPC in which they allege violations of privacy laws, RICO, defamation, HIPAA, ADA, the Computer Fraud and Abuse Act, the Klu Klux Klan Act of 1870 and 1871, the Fourth Amendment, and various undefined constitutional rights.

10. In summary, Plaintiffs appear to be alleging that IPC is responsible for the above-mentioned violations because of a search and seizure of their medical records through various governmental entities.

11. For the reasons stated in this Reply, IPC hereby moves for dismissal of Plaintiffs' claims against it for the following reasons:

- (a) HIPAA provides no private cause of action;
- (b) HIPAA expressly authorizes the use of protected health information for law enforcement activities and fraud waste and abuse investigations;
- (c) Plaintiffs have not sufficiently pled and do not have viable claims under the ADA and Computer Fraud and Abuse Act (CFAA), 18 U.S.C. § 1030;
- (d) the Fourth Amendment and any other constitutional-related claims, including state law claims fail as pled against IPC since such claims can only be brought against a state actor;
- (e) any conspiracy claims fail together with their underlying claims;

- (f) Plaintiffs' Complaints are deficient of facts and causation pertaining to IPC;
- (g) Plaintiffs' defamation and RICO claims fail to allege property damage or any other compensable injury. In addition, Plaintiffs do not allege an actual defamatory statement pertaining to themselves individually or how any such allegations are casually connected with IPC.
- (h) Plaintiffs' fail to allege most of their theories of liability in an actual pleading and, instead, only argue them in motions and objections.
- (i) all other allegations and claims made against IPC fail for lack of Pleading thereby failing to reasonably inform IPC of the nature of Plaintiffs' claims and fall short of applicable pleading requirements.

ADOPTION OF REPLIES IN SUPPORT OF OTHER DEFENDANTS'
MOTIONS TO DISMISS

In order to reduce duplicative briefings, to the extent applicable and not inconsistent with any argument set forth above, IPC adopts and incorporates by reference all arguments raised by reply briefs filed by other Defendants in this case and any of the cases that were consolidated in this case.

CONCLUSION AND RELIEF REQUESTED

For the foregoing reasons, IPC respectfully requests that this Court grant IPC's Motion to Dismiss, dismiss (current and future related) Plaintiffs' claims against IPC with prejudice, and award costs and fees incurred by IPC as a result of this frivolous action.

Dated: March 22, 2019

Respectfully submitted,

THE HEALTH LAW PARTNERS, P.C.

By: /s/ James R. Witham

Robert S. Iwrey (P48688)

James R. Witham (P79270)

Attorneys for Defendant iPatientCare Inc.

32000 Northwestern Highway, Suite 240

Farmington Hills, MI 48334

Tel: (248) 996-8510

Fax: (248) 996-8525

riwrey@thehelp.com

jwitham@thehelp.com

THE HEALTH LAW PARTNERS, P.C. - 32000 NORTHWESTERN HWY., STE. 240 - FARMINGTON HILLS, MI 48334 - (248) 996-8510

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of March 2019, Defendant iPatientCare Inc.'s Renewed Motion (and Brief in Support) to Dismiss was filed with the Clerk of the Court through the ECF system which will give notice to all parties of record. In addition, I further certify that the following entities/individuals were served via U.S. mail, certified return receipt, postage prepaid on March 25, 2019:

Tracy Clare Micks-Harm
Plaintiff Pro Per
1840 Bayview Dr.
Monroe, MI 48161

Renay Blakesley
Plaintiff Pro Per
6298 Suder Ave.
Erie, MI 48133

Raymond Blakesley
Plaintiff Pro Per
6298 Suder Ave.
Erie, MI 48133
Tel: 734-347-3393

Debra A. Nichols
401 W. 4th St.
Monroe, MI 48161

Ines Helm
Plaintiff Pro Per
1666 N. Raisinville Rd.
Monroe, MI 48162

Dennis Helm
Plaintiff Pro Per
1666 N. Raisinville Rd.
Monroe, MI 48162

Eric Cook
Plaintiff Pro Per
920 Greenwood, Apt. E.
Monroe, MI 48162

Eric Cook
for Jacob Cook
920 Greenwood Apt E.
Monroe, MI 48162

/s/Sarah Hug
Sarah Hug
Office Manager
The Health Law Partners, P.C.
32000 Northwestern Highway, Suite 240
Farmington Hills, MI 48334
(248) 996-8510

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THE HEALTH LAW PARTNERS, P.C. - 32000 NORTHWESTERN HWY., STE. 240 - FARMINGTON HILLS, MI 48334 - (248) 996-8510